

C Unit 12 C_{PRIVATE}

Environmental Audits and Inspections

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Environmental Audits and Inspections

An environmental audit is an independent assessment of the environmental compliance policies, practices, and controls of a RCRA regulated facility. Such audits are generally conducted by consultants at periodic intervals. In addition, they are often conducted prior to a RCRA inspection.

An environmental inspection is a systematic examination of a RCRA permitted facility by a regulatory agency to ensure that all regulations, procedures and policies are being followed. Both audits and inspections are essentially the same; the main difference is the people conducting the activity.

This unit is written from the point of view of the inspector. By understanding the background, constraints, authority, and obligations of the inspector, a RCRA permitted facility is in an excellent position to conduct a meaningful audit and to effectively interface with the inspector.

12.1 BACKGROUND

The Resource Conservation and Recovery Act of 1976 (RCRA) is the primary statute governing the regulation of solid and hazardous wastes. RCRA replaced the Solid Waste Disposal Act of 1965 and supplemented the Resource Recovery Act of 1970. RCRA was substantially amended by the Hazardous and Solid Waste Amendments of 1984 and is currently scheduled for reauthorization.

With respect to hazardous waste, the principal objectives of RCRA are:

- ° to promote the protection of human health and the environment from potential adverse effects of improper hazardous waste management; and
- ° to reduce or eliminate the generation of hazardous waste as expeditiously as possible.

To achieve these objectives, RCRA authorized the EPA to regulate the generation, transport, treatment, storage, and disposal of hazardous wastes. The EPA has specific authority, under Subtitle C of RCRA, to:

- ° promulgate standards governing hazardous waste generation and management;

- ° promulgate standards for permitting hazardous waste treatment, storage, and disposal facilities;
- ° inspect hazardous waste management facilities; and
- ° authorize states to manage the RCRA Subtitle C program, subject to EPA oversight.

The standards thus promulgated are found in 40 CFR Parts 260 through 272. The core of the regulations establishes the "cradle to grave" hazardous waste regulatory program with major program areas as follows:

- ° identification and listing of hazardous waste (40 CFR 261);
- ° standards for generators of hazardous waste (40 CFR Part 262);
- ° standards for transporters of hazardous waste (40 CFR Part 263);
- ° standards for owners and operators of hazardous waste treatment, storage, and disposal facilities (40 CFR Parts 264, 265, and 267);
- ° standards for the management of specific hazardous waste and specific types of hazardous waste management facilities (40 CFR 266);
- ° land disposal restriction standards (40 CFR Part 268);
- ° requirements for the issuance of permits to hazardous waste facilities (40 CFR 270); and
- ° guidelines for authorizing state hazardous waste programs to be operated in lieu of the Federal program (40 CFR Part 271).

These standards were first promulgated in May 1980. Additional standards have been added periodically since that time to complete the scope of the initial program mandated in RCRA, to respond to new statutory initiatives, and to improve upon the original program.

12.2 TYPES OF INSPECTIONS

Types of inspections differ based on differences in purpose, in facility status and in the probable use of results. The different types of RCRA inspections are discussed below.

- ° **Compliance Evaluation Inspection (CEI)** Routine inspections of hazardous waste generators, transporters, and treatment, storage, and disposal facilities to evaluate

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facility compliance with applicable RCRA standards.

- ° **Case Development Inspection (CDI)** Inspections conducted when RCRA violations are suspected or revealed during a CEI. This inspection gathers data to support an enforcement action.
- ° **Comprehensive Ground Water Monitoring Evaluation (CME)** Detailed evaluation of the adequacy of the design and operation of ground water monitoring systems at RCRA facilities.
- ° **Operation and Maintenance Inspection (O&M)** Inspection of RCRA land disposal facilities to determine the adequacy of the operation and maintenance of ground water monitoring systems.
- ° **Lab Audits** Inspections of laboratories performing ground water monitoring analysis to determine if proper sample handling and analysis protocols are used.
- ° **State Oversight Inspections** Inspections conducted by Federal EPA personnel to determine the effectiveness of a state hazardous waste management program and to determine facility compliance.

The CEI is the most common type of inspection and is the focus of this unit. This type of inspection is the primary enforcement mechanism for detecting and verifying RCRA violations. Such inspections are initiated either for neutral, administrative purposes, or "for cause" (probable violations based on a complaint or observation).

The CEI serves two important functions. It determines compliance with RCRA regulations, permit provisions, or pre-existing enforcement orders, and it supports any environmental actions. Therefore, the inspection must be performed in a manner that is both technically and legally correct. Flaws in either inspection component may hamper, prevent, or invalidate the use of the inspection results to support enforcement actions. Thus, the two overriding criteria that must guide the conduct of inspections are the following.

- ° **Technical Accuracy and Integrity** Inspections must be technically correct. Any measurement or other data collection and analysis must be thorough, technically proper, and appropriately documented.
- ° **Legal Propriety** Legal requirement concerning the conduct of inspections must be scrupulously followed.

Evidence obtained during an inspection may result in the regulatory agency taking one or more of the following actions:

- ° issuance of a no violation letter;
- ° issuance of an administrative order;
- ° assessment of an administrative civil penalty;

- commencement of a permit action;
- institution of a civil court action; and
- institution of a criminal court investigation.

12.3 AUTHORITY AND LIMITATIONS OF THE INSPECTOR

Inspection authority is found in Section 3007 of RCRA. This section gives authority to conduct compliance and evaluation inspections of hazardous waste management facilities for the purpose of ensuring compliance with the provisions or regulations promulgated under RCRA. Access to such facilities is granted to "duly designated" officers, employees, or representative of the US EPA (or representatives of an authorized state program). Inspectors are permitted to have access to, and to copy all records at hazardous waste management facilities at all reasonable times. Additionally, inspectors can collect samples and are required to follow recordkeeping and labeling requirements when sampling.

The inspection must be conducted in a prescribed manner, which includes the following:

- presenting EPA or state identification;
- entering the establishment at a reasonable time and completing the inspection as promptly as possible;
- issuing a receipt for any samples obtained;
- providing a duplicate sample (or sample split) if requested; and
- furnishing a copy of any sample analysis, if conducted, to the owner, operator, or agent in charge.

Any confidential business information encountered by the inspector must be properly handled to ensure that confidentiality is not compromised. Most RCRA inspectors have been cleared for confidential business information (CBI).

12.4 WORK ETHICS

Inspection personnel are expected to perform their duties in a professional and responsible manner. This includes developing and reporting of the facts of an investigation completely, accurately, and objectively. Inspectors must avoid any act or failure to act that could be considered motivated by reason of personal or private gain.

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A conflict of interest may exist wherever an inspector has a personal or private interest in a matter that is related to his or her official duties and responsibilities. To maintain the integrity of the investigator and the regulatory organization represented, it is important to avoid even the appearance of a conflict of interest.

Good working relations should be established during the inspection. All parties involved should use diplomacy, tact, and persuasion, even if hostile persons are encountered. Inspectors should not offer opinions concerning any person, regulatory agency, manufacturer, or industrial product.

Inspectors are forbidden from accepting any gift, gratuity, entertainment (including meals), favors, or any other thing of monetary value from any person, corporation, or group having a contractual or financial relation with the regulatory authority represented by the inspector.

12.5 PREPARING FOR THE INSPECTION

Adequate preparation is critical to performing an effective RCRA inspection. Inspectors generally spend only a brief period of time on-site. Therefore, it is important that the inspection be properly scoped and planned to use on-site time as efficiently as possible and to insure that all appropriate portions of the facility are evaluated.

12.5.1 DEFINING THE SCOPE OF THE INSPECTION

The inspector must determine the purpose and objectives of the inspection in order to define the scope. For example, the CEI is comprehensive in scope and entails a detailed evaluation of all RCRA related activities at the facility. Once the scope has been defined, the inspector can determine:

- ° coordination with other officers and agencies;
- ° what background information should be studied; and
- ° what regulation and enforcement documents should be reviewed.

12.5.2 COORDINATING THE INSPECTION

Based on the scope of the inspection, the inspector should identify what other agency officers and individuals in other federal, state, or local agencies may be interested in the performance of the inspection. These officers or agencies should be contacted to coordinate the inspection.

The inspection may be of interest to more than the inspector because:

- ° another agency is pursuing action that might interface with the inspection ;
- ° the inspection may provide incidental information that would be useful to another agency's enforcement or regulatory activities; and
- ° shared jurisdiction of the RCRA enforcement at the facility.

In addition, the inspector will likely contact the person(s) responsible for writing the facility permit. This person is a valuable source of facility information, insights, and suspected problem areas.

12.5.3 BACKGROUND INFORMATION

Both state and federal RCRA programs have files on each facility to be inspected. These files often contain process flow charts, waste inventory, inspection results, compliance history, reports, permits, complaints, details of each waste management unit, records of phone conversations, etc. The inspector typically reviews the file to gain a technical understanding of the facility, to review compliance history including past violations and corrective measures, to focus the investigation on possible problem areas, and to determine applicable regulations or changes in the regulations that will affect the inspection process and/or facility compliance.

12.5.4 SPECIFIC INSPECTION PLANS

The final preparation step is to apply the previously discussed information to develop a site specific inspection plan. This plan should establish the inspection strategy by specifying how the inspector intends to proceed once on-site, and highlighting any particular questions or problems the inspection should address. Generally, the inspection plan will address the following topics:

- ° facility notification;
- ° conducting the opening conference;
- ° performing the record review; and
- ° conducting the visual inspection.

Notification of the RCRA facility to be inspected may or may not be appropriate depending on the purpose of the inspection, regulatory policy concerning notification, and suspicion of illegal activity. For example, it is usually appropriate to notify facilities of a routine periodic compliance inspection when the facility is not expected to have

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significant violations. However, it is generally not appropriate to notify a facility in advance of inspections performed where violations are known or suspected, or where the purpose of the inspection is to support a specific enforcement action.

The opening conference, record review, and visual inspection require careful planning. The sequence of these activities must be determined as well as facility personnel that will be needed. Topics to be discussed, records to be reviewed, route of the inspection and other details must be addressed. Appropriate safety and sampling equipment must be identified including personal protective equipment, sampling devices, sampling containers, labels, storage containers, decontamination equipment, etc. The inspector should be fully prepared for all portions of the inspection. Checklists are often used to ensure that all aspects are covered during this final planning stage.

12.6 CONDUCTING THE INSPECTION

In most cases, more time and work is expended prior to an inspection than during the inspection. Inspections are costly for both the inspector and for the facility being inspected, so this process should be short, efficient, and to the point.

12.6.1 FACILITY ENTRY

The inspector should determine the appropriate time to enter. Inspections must be conducted at a "reasonable" time, usually during normal working hours and should be completed in a timely manner.

Upon arrival, the inspector should locate the owner or operator and present identification. Inspectors may be required to sign a logbook or passbook, but they cannot sign waivers of other legal documents that limit the facility's liability in the event of an accident. Additionally, inspectors should not sign other legal documents limiting the inspector's rights or the owners responsibilities while at the facility.

The owner or operator gives consent to inspect the premises. This consent can be withdrawn at any time or the inspector denied access to certain (or all) portions of the facility. However, withdrawal of consent or denied access is equivalent to a refused entry. Refused entry is appropriate if the inspector does not have the safety equipment required by the facility. Other reasons for refused entry generally result in legal actions and the securing of a warrant to allow inspection.

12.6.2 OPENING DISCUSSIONS

The next step in the inspection process is often an opening discussion with the owner or operator. This meeting has several purposes.

- **Outline Inspection Objectives** Cresenting the purpose and scope of the inspection will help avoid misunderstandings.
- **Provide Management with RCRA Information** Cthe inspector is regarded as a source of regulatory information; questions concerning new or existing RCRA regulations can be discussed at this time.
- **Establish the Order of the Inspection** Cpresenting the order of the inspection will help eliminate wasted time by allowing officials time to make records available and to start up intermittent operations if necessary. If sampling is necessary, arrangements should be made at this time.
- **Establish Meeting Schedules** Cscheduling meetings with key facility personnel will avoid time wasted in waiting for people to become available.
- **Arrange for Facility Personnel to Accompany the Inspector** Cit is often helpful if a facility representative accompanies the inspector to explain the fine points of the operations and to answer questions.
- **Set Up a Closing Conference** Ca wrap-up meeting should be scheduled with appropriate officials to provide a final opportunity to gather information and answer questions.

The opening discussion is an excellent time for the inspector to establish control of the inspection process. While the inspector should avoid causing undue disruptions of facility operations, the inspector must not let the facility representative steer the course of the inspection.

During the opening discussion and throughout the inspection, the inspector should look, listen, and question to discern any inconsistencies that might exists with respect to compliance. Once an inconsistency is discovered, the inspector should pursue the contradiction until he or she is satisfied that it either constitutes a violation or simply represents a misunderstanding.

12.6.3 RECORDS REVIEW

The records review provides the inspector with the opportunity to become thoroughly familiar with the facility operations, to formulate specific questions to be investigated during the visual inspection, to determine if require records are present and up to date, and to discover suspected falsification of data. RCRA regulations state that inspectors have access to and can copy all records relating to hazardous wastes.

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The records reviewed will depend on the type of facility being investigated. Records often included are as follows.

- ° **Generator:** contingency plan, manifests, biennial reports, exemption reports, waste analysis;
- ° **Transporter:** manifests, shipping papers for bulk shipments by rail or water; and
- ° **TSD Facility:** training plans, waste analysis plan, inspection schedule, contingency plan, manifests, operating records, ground water monitoring plan and record, closure and post-closure plans.

12.6.4 VISUAL INSPECTION

Visual inspections generally proceed in a way that allows the inspector to evaluate and understand the waste flow within the facility and to determine the compliance status of each segment of the waste management system.

For example, the visual inspection may first inspect points of waste generation and accumulation. Next, in-plant waste transport from generation and accumulation points to storage and treatment units are evaluated. Finally, the storage and treatment units are examined. This type of flow enables the inspector to understand the movement and control of waste within the facility. This procedure may allow the inspector to identify:

- ° hazardous waste that may not currently be considered hazardous by the owner/operator;
- ° routine management practices that are not in compliance;
- ° steps in the management process during which wastes may be mishandled or misidentified;
- ° opportunities for spills or releases; and
- ° unusual situations that vary from the facility's stated operating procedures and that may indicate a violation.

Inspectors should not allow facility representatives to hurry the inspection, change the direction of the inspection, or prevent the inspector from asking pertinent questions of facility personnel. Relevant questions are part of the inspection. Diverse personnel should be questioned to identify any inconsistencies that could indicate non-compliance.

Sampling is generally not part of a CEI. However, the inspector should be aware of, and identify, potential sampling requirements that may need to be fulfilled in future inspections, particularly in cases where the potential for non-compliance or criminal activity may exist. Sampling is

generally conducted to verify the identity of a waste or to identify potential releases of hazardous wastes. To assist in this process, the inspector should identify the media or wastes to be sampled, the physical locations to be sampled, physical characteristics of the medium to be sampled, and other relevant information that will be helpful in developing a sampling plan for a future inspection.

12.6.5 DOCUMENTATION

Documentation refers to all printed and mechanical media produced, copied, or taken by the inspector. The inspector should use only the following types of records: field notebooks, checklists, photographs, maps and drawings.

The inspector should maintain a legible field notebook that includes all inspection activity, conversations, and observations. Also included are photograph points, areas of potential violation, and sampling points. The notebook should contain only facts and observations because it will form the basis for written reports and may be used as documentary evidence in civil or criminal hearings. Field notebooks should be bound, each page numbered, and each page signed and dated by the inspector.

Checklists are often used in conjunction with a field notebook to record brief inspection observations. However, the purpose of a checklist is to organize the inspection, not to record all pertinent information. Inspectors should not restrict an inspection to items on a checklist, and should be observant of waste management practices and other regulated activities not covered on the checklist.

Photographs provide the most accurate documentation of the inspector's observations and are crucial to validating existing situations and potential violations. Photographs must be identified by date, time, photographer, name of site, direction, photo point, etc.

Maps and other drawings can be useful in documenting violations. They can provide graphic clarification of a particular site and demonstrate spill parameters and related information. Such documents should be simple and free of extraneous details. Scale and compass points should be included.

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12.6.6 CLOSING DISCUSSION

The inspector should hold a closing meeting for the purpose of presenting and discussing the preliminary inspection findings. Facility officials are usually anxious to discuss the findings of an inspection prior to the departure of the inspector. Thus, the closing meeting is used to answer questions, prepare necessary receipts, request records that were not provided or needed during the opening discussion, and present the preliminary results of the inspection. The inspector should also discuss follow-up procedures, such as how the inspection results will be used and what further communications should be expected.

It is essential that the inspector maintain a professional, courteous demeanor, even though the attitude of the facility representatives may not be cordial. Within appropriate limits, the closing conference provides a good opportunity to offer various kinds of help that may assist in solving waste management problems.

Contact with the facility after the inspection can serve to gather additional information and show interest in the facility, but such contacts should be made with discretion. Inspectors should avoid making contacts just to be a "nice person." All contacts should serve enforcement or compliance objectives.

12.7 THE INSPECTION REPORT

Typically, the written inspection report contains a checklist, narrative information, and documentary support as necessary. The narrative portion of the report supports and explains findings presented in the checklist. The narrative is intended to describe the inspection results in detail and generally contains a description of the facility, generation of waste, waste management operations, and apparent violations. Documentary support may include photographs, drawings, printed matter, and other pertinent information to support the narrative and checklist. The report is sent to the facility and is retained by the appropriate regulatory agencies.

The inspection report is considered public information and is available to all interested individuals, groups, and organizations. Most regulatory employees have both a legal and traditional responsibility for making useful educational and safety information available to the public. This policy does not extend to information related to the suspicion of a violation, evidence of possible misconduct, or confidential business information.

12.8 ADDITIONAL READING

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